

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6648 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?
1 to 5 NO

JAYANTILAL CHIMANLAL ADANI

Versus

ELL FASHIONS LIMITED

Appearance:

1. Criminal Misc.Application No. 6648 of 2002
MR TS NANAVALI for Petitioner No. 1
NOTICE SERVED BY DS for Respondent No. 1
MRS AMY YAJNIK for Respondent No. 2
MR RC KODEKAR APP for Respondent No. 3
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CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 12/03/2003

C.A.V.JUDGEMENT

1. Rule. Learned counsel waive service for the respondents.

2. By this application under Section 407 of the Code of Criminal Procedure, the applicant-original complainant has prayed to call for Criminal Appeal No.21 of 2002 pending in the City Sessions Court, Ahmedabad and order hearing of the same along with Criminal Appeal No.677 of 2002 by this Court. It appears from the record that pursuant to the complaint of the complainant numbered and tried as Criminal Appeal No.173 of 2002 in the Court of the learned Metropolitan Magistrate, two of the accused persons were acquitted whereas, accused Nos.1 and 4 were convicted and sentenced with further orders. The two accused persons who are convicted have preferred Criminal Appeal No.21 of 2002 in the Court of the learned City Sessions Judge. And the applicant-complainant has challenged in this court the same judgment by way of acquittal appeal being Criminal Appeal No.677 of 2002. The leave to appeal has been granted and the appeal is admitted by this Court. Thus, two parallel appellate proceedings have arisen from the same judgment. It was, therefore, submitted on behalf of the applicant that it was expedient and in the interest of justice that Criminal Appeal No.21 of 2002 pending in the Court of the learned City Sessions Judge be transferred to this Court.

3. The application was opposed on behalf of the respondents mainly on the ground that grant of the prayer of this application would amount to taking away the right of the respondents to having recourse to this Court after the decision of the Sessions Court in appeal. Learned counsel Mrs.Yagnik relied upon the judgment of the Andhra Pradesh High Court in A.JOGI NAIDU v. KOYALADA VENKATARAMANA [1986 Cri.L.J. 963] wherein a revision petition was filed by the complainant to enhance the sentence and the accused had filed appeals against conviction and sentence in the Sessions Court. The complainant subsequently filed a transfer petition to transfer the appeals to the High Court to be tried along with the revision petition. In such circumstances, it was held that the revision petition had to be kept pending till disposal of the appeals by the Sessions Court to enable the complainant to pursue the same after the appeals were disposed of by the Sessions Court. The remedy of the accused by revision to the High Court would have been lost if the appeal was heard directly by the High Court. It was also held that the hearing of the appeal and the revision by the High Court should be considered as an exception. This judgment was rendered

after referring and relying upon the judgment of the Supreme Court in ROMESH CHANDRA ARORA v. THE STATE [AIR 1960 SC 154]. In that case, the appellant was convicted by the Magistrate and he had preferred an appeal from his conviction and sentence to the Sessions Judge. The High Court without being aware of filing of the appeal, suo motu, called for the record and proceedings of the Magistrate in order to satisfy itself as to the propriety of the sentence passed by the Magistrate and directed the issue of notice to the appellant to show cause why the sentence should not be enhanced. Later, the High Court ordered the transfer of the appeal pending before the Sessions Judge to itself for hearing and heard together the appeal and the rule for enhancement. It upheld the conviction, dismissed the appeal and enhanced the sentence. The Supreme Court held that it was open to the High Court to act on its own initiative, it committed no illegality in adopting the course which it did and the appellant could make no grievance of the order of transfer on the ground of prejudice, because the appellant was fully heard both as to the correctness of his conviction and the propriety of the sentence originally passed against him by the Magistrate. Therefore, in the facts of the present case, it would be neither illegal nor a ground of prejudice be available to the respondents if the appeal pending in the Sessions Court is transferred to this Court and heard along with the acquittal appeal which is admitted. It also appears to be expedient and reasonable and in the interest of justice that the judgment under challenge should be examined by one and the same Court. The alternative course of waiting till the Sessions Court decides the appeal pending before it, as suggested by learned counsel Mrs.Yagnik, is not expedient since it may prolong the final phase of litigation and create avoidable complications.

4. In the above facts and circumstances, the application is allowed and the Criminal Appeal No.21 of 2002 pending in the City Sessions Court, Ahmedabad is ordered to be transferred for being heard along with Criminal Appeal No.677 of 2002 pending in this Court. Rule made absolute accordingly with no order as to costs.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)